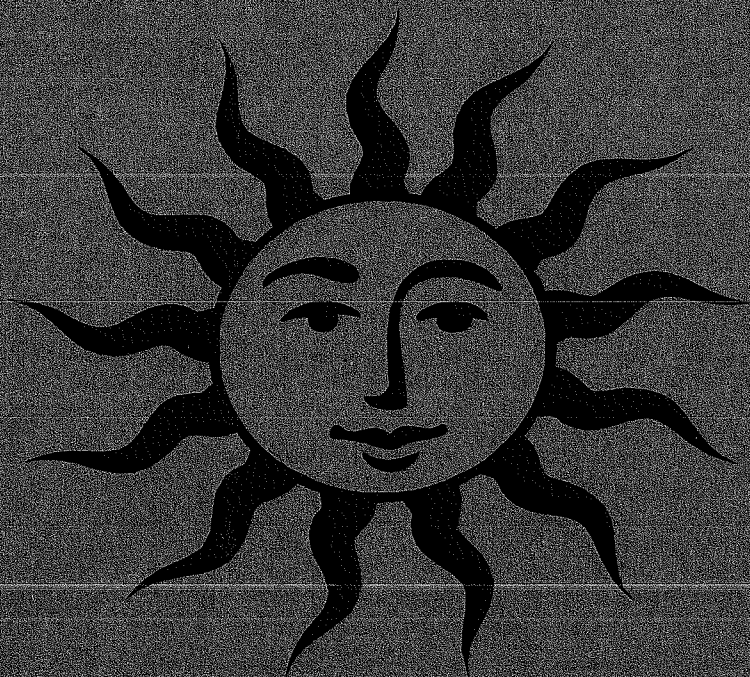


HANDBOOK
ON
SUNSET & SUNRISE
REVIEW



Joint Legislative Audit Committee
1999

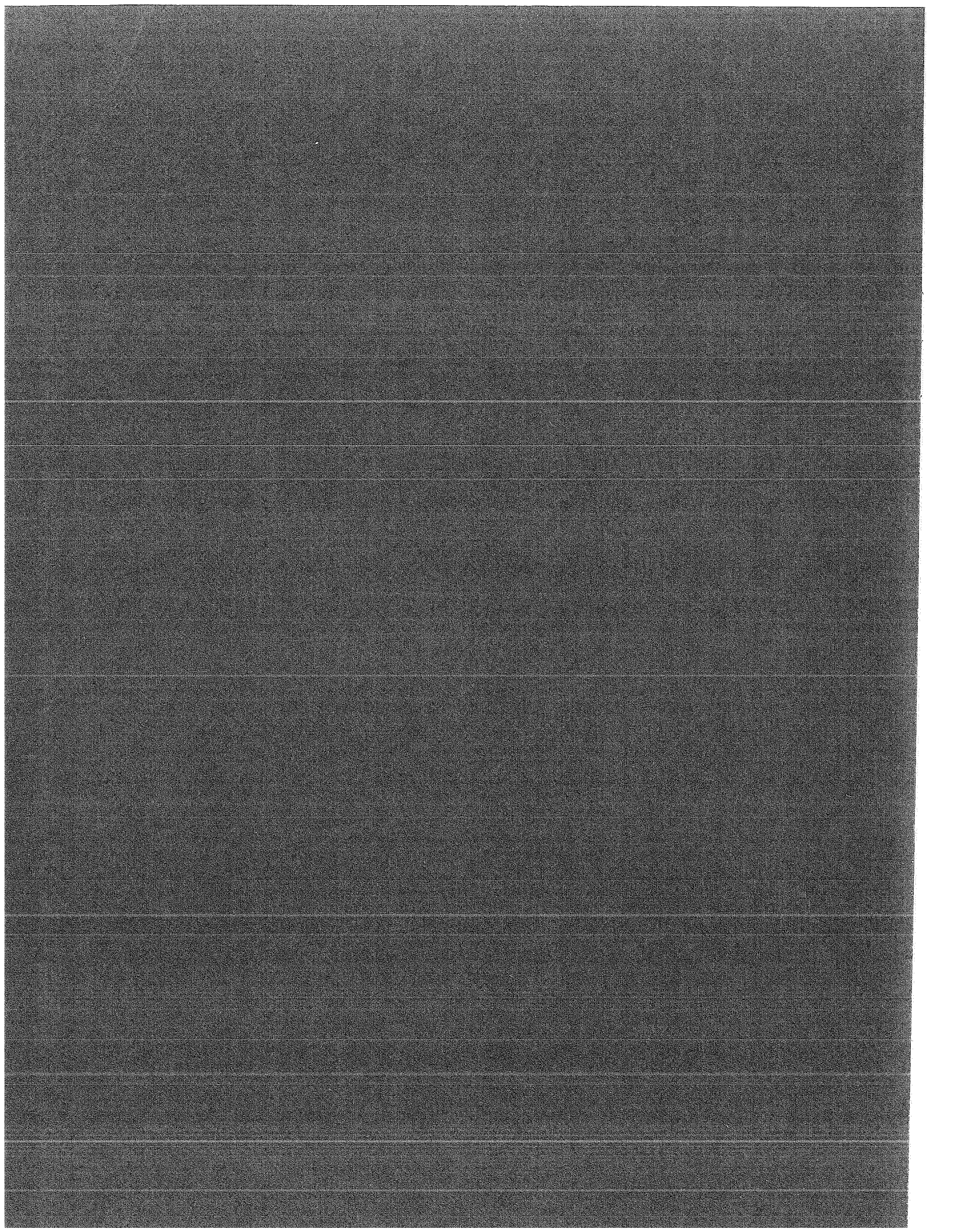


TABLE OF CONTENTS

Introduction.....	1
Role of Participants	
Joint Legislative Audit Committee.....	2
Office of the Auditor General	5
Committee of Reference.....	6
Agency Subject to Review	7
Legislative Staff	7
Committees of Reference (Forty-fourth Legislature)	
Senate COR	8
House of Representatives COR	9
Sunset Review Process	
Description	11
Conducting a Sunset Review	
Auditor General Conducts Performance Audit.....	12
Timetable.....	16
Committee of Reference Conducts Performance Audit.....	17
Timetable.....	21
Sunrise Review Process	
Description.....	22
Sunrise Factors.....	23
Conducting a Sunrise Review	
Conducting a Sunrise Review.....	25
Timetable.....	27
Exhibits	
A. Correspondence (COR conducts sunset audit)	
B. Hearing Notice	
C. Staff Summary/Information to Members	
D. Final Sunset Report	
E. Final Sunrise Report	

INTRODUCTION

Established by Laws 1978, Chapter 210, the sunset review process is the process by which the Legislature reviews the purpose and functions of state agencies to determine whether continuation, revision, consolidation or termination is warranted. Sunset reviews are based on audits conducted by either the Office of the Auditor General (OAG) or a Committee of Reference (COR). Upon completion of the sunset audit, a public hearing is held by the COR to discuss the audit and receive testimony from agency officials and the public.

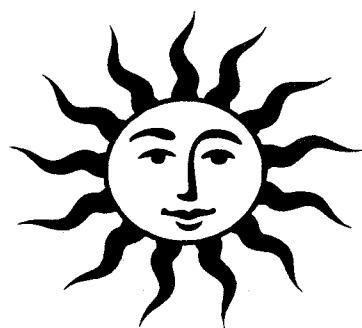
Similarly, the sunrise process was established, by Laws 1985, Chapter 352, to provide a mechanism for health professions to request regulation or expansion in scope of practice. The sunrise process begins when an applicant group presents the Joint Legislative Audit Committee (JLAC) with a report defining the need for regulation or scope of practice expansion. JLAC then assigns the report to a COR for review and recommendation.

This handbook is designed to be a guide for legislators and staff involved in the sunset and sunrise review of state agencies, boards, commissions, institutions and programs (agencies). However, both the sunset and sunrise processes are provided for pursuant to statute and it is recommended that statute be consulted in conjunction with the use of this handbook.

For ease of reference, the handbook is divided into four primary sections. The first section provides a brief description of the entities that play an important role in the processes, specifically, JLAC, COR, OAG and legislative committee staff. The next two sections are divided based upon the actual sunset and sunrise processes. These two sections are further divided into brief descriptions of the overall sunset or sunrise process and a step-by-step guide of how to conduct a sunset or sunrise review. Finally, samples from previous reviews are provided to help eliminate questions regarding written correspondence and final reports.

Role of Sunset Review

Participants



ROLE OF PARTICIPANTS

The sunset and sunrise processes primarily involve JLAC, COR and the OAG. Legislative standing committee members, Joint Legislative Budget Committee (JLBC) staff, agency staff and legislative committee staff and interested parties also play important roles in the process.

JOINT LEGISLATIVE AUDIT COMMITTEE

(Title 41, Chapter 7, Article 10.1, Arizona Revised Statutes)

MEMBERSHIP

JLAC is a twelve-member committee, consisting of six members from each chamber of the Legislature. Five members each are appointed by the President of the Senate and Speaker of the House of Representatives, based on the members' understanding and interest in agency audits. JLAC membership includes an Appropriations Committee member from each chamber and no more than three appointees from each chamber may be members of the same political party. Additionally, the President of the Senate and Speaker of the House of Representatives serve as ex-officio members. JLAC chairmanship alternates each year between the House and Senate.

Below are the JLAC members for the Forty-fourth Legislature:

Senate Members

Senator Tom Smith (Chair 1999)
Senator Keith Bee
Senator Herb Guenther
Senator Darden Hamilton
Senator Pete Rios
President Brenda Burns, *Ex-officio*

House Members

Representative Roberta Voss (Chair 2000)
Representative Bob Burns
Representative Ken Cheuvront
Representative Andy Nichols
Representative Barry Wong
Speaker Jeff Groscost, *Ex-officio*

JLAC POWERS & DUTIES

JLAC oversees all legislative and agency audit functions. Subject to legislative approval, JLAC appoints the Auditor General and directs all sunset, performance, special and financial audits and investigations. JLAC is required to ensure that agencies comply with audit findings and recommendations and has legislative subpoena power.

Following are the statutorily prescribed functions of JLAC:

- assigning agencies subject to sunset review to a COR;
- assigning sunrise review applicants to a COR;
- determining whether OAG or a COR will conduct an agency's sunset audit;
- directing OAG or a COR to conduct performance audits or special audits;
- overseeing the preparation and introduction of legislation to delay a sunset review if OAG or a COR is unable to complete the review according to schedule;
- directing OAG or a COR to conduct performance audit follow-up reviews;
- assigning COR chairmen *[JLAC has the statutory authority to appoint COR chairmen, but traditionally the chairs are selected by standing committee chairmen when appointing the members];* and
- meeting quarterly or on the call of the chairman.

PERFORMANCE AUDIT FOLLOW-UP PROCEDURES

In 1997, JLAC adopted performance audit follow-up procedures in order to enable JLAC to meet its statutory obligation of ensuring that agencies comply with the recommendations generated by the OAG as a result of a sunset, performance or special audit or investigation. As part of these procedures, in its response to the performance audit, the agency must make one of the following statements regarding each recommendation:

- a. The finding of OAG is agreed to and the audit recommendations will be implemented.
- b. The finding of OAG is agreed to and a different method of dealing with the finding will be implemented.
- c. The finding of OAG is not agreed to, but the recommendation will be implemented.
- d. The finding of OAG is not agreed to and the recommendations will not be implemented.

Upon completion of an audit, JLAC is responsible for ensuring that each audit receives a public hearing. In instances where the agency does not agree with a recommendation and will not implement the recommendation, JLAC is required to request either a standing committee or COR to hold a hearing on the audit to specifically address those recommendations and report back to JLAC. At any time following the release of an audit, the JLAC chair has the authority to convene a panel of JLAC members to meet with OAG and the agency to discuss the recommendations the agency does not agree with and will not implement. The panel will hear from both parties and recommend to the full JLAC that there is either no need for further action or sufficient differences exist between OAG and the agency that warrant the attention of the full JLAC.

The follow-up procedures also require agencies to provide JLAC with a written response detailing the efforts in, and status of, implementing each audit recommendation within six months after the published date of the audit. An agency may, depending on its progress of implementing the audit recommendations at six months, be required to provide additional data and information regarding the status of recommendation implementation within a period not to exceed 18 months. OAG has the authority to verify the information provided in the six or 18-month progress report and issue a report to JLAC and other relevant legislative committees.

OFFICE OF THE AUDITOR GENERAL

(Title 41, Chapter 7, Article 10.1, Arizona Revised Statutes)

REQUIREMENTS

Statute provides for the appointment of the Auditor General by JLAC, subject to approval by the Legislature. The term of office is five years however, the Auditor General may be removed from office pursuant to a concurrent resolution of the Legislature. Persons who serve as the Auditor General may be re-appointed.

Statute requires the Auditor General to be a certified public accountant licensed to practice in Arizona and therefore subject to the standards and ethics of the accounting profession as regulated by the Arizona Board of Accountancy.

OAG POWERS & DUTIES

OAG is responsible for providing independent financial, performance and compliance audits in support of legislative oversight and public accountability of funds administered by the state and certain local governments. In order to perform its audits, OAG is authorized by statute to access agency correspondence, files and other records, bank accounts, criminal history record information, money and other property of any state agency. Additionally, prior to conducting a performance audit OAG contacts Legislators and legislative staff to receive in-put and "leads" regarding areas of concern. OAG recently started the practice of contacting Legislators and staff following the publication of an audit to respond to questions regarding audit findings.

The OAG is required to perform the following duties relating to the sunset process:

- prepare and submit to JLAC a list of all agencies scheduled for sunset termination at least 20-months prior to agency termination;
- recommend to JLAC sunset audits to be conducted by OAG or COR;
- conduct all sunset (performance) audits assigned by JLAC;
- distribute copies of agency performance audits to JLAC members and staff; and
- testify before COR to performance audit findings.

COMMITTEES OF REFERENCE

(ARS § 41-2954)

MEMBERSHIP

The COR is a subcommittee of a standing committee, designed to act as the proxy of the standing committee. Consisting of five members, a COR is appointed by each Senate and House of Representatives standing committee. Pursuant to statute, no more than three members may be from the same political party. Although JLAC has the statutory authority to appoint the COR chairs, traditionally this has been done by the chair of the standing committee at the same time he or she appoints the COR.

When conducting a sunset or sunrise hearing, the House and Senate COR meet jointly, therefore there is a single COR chair and separate motions for the House side and the Senate side is *not* in order. A quorum of a COR for sunset and sunrise purposes consists of a majority of all members.

Agencies subject to sunset review are generally assigned to a COR whose standing committee would most likely be responsible for hearing any legislation affecting that particular agency and that has knowledge or expertise in that particular subject area.

COR POWERS & DUTIES

COR have legislative subpoena power and are responsible for:

- conducting a sunset audit of each agency assigned to it by JLAC;
- holding at least one public hearing upon receipt or completion of the sunset audit;
- evaluating and recommending agency continuance, revision, consolidation or termination based on statutory sunset factors;
- evaluating and recommending regulation or increased scope of practice based on statutory sunrise factors;
- submitting a final sunset or sunrise review report by December 1 to JLAC, the President of the Senate, Speaker of the House of Representatives, Governor, OAG and the agency that was the subject of the review; and
- preparing legislation to implement its recommendations *[JLAC is statutorily required to oversee the preparation of such legislation, but traditionally the COR chair and staff have overseen this responsibility]*.

AGENCY SUBJECT TO REVIEW

An agency subject to review performs the following functions in the sunset and sunrise review process:

- *Assists the OAG or COR* - The agency works with the OAG, providing any necessary information. If the sunset audit is conducted by a COR, the agency provides all necessary information and responds to the sunset (audit) questions submitted by the COR.
- *Testifies at hearings* - Agency officials testify at public hearings, providing justification for agency continuance, modification or creation and any additional information requested by COR members.
- *Support introduction of legislation* - Agency officials should work with staff and COR chairman to coordinate the drafting and introduction of legislation to continue, modify or create the agency pursuant to COR recommendations.

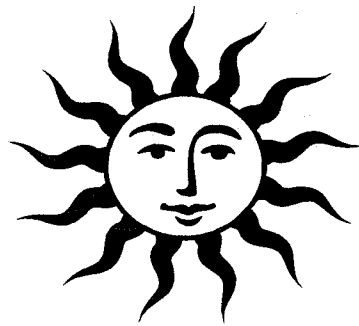
LEGISLATIVE STAFF

As the chairmanship of JLAC shifts between the House of Representatives and the Senate, so does primary staffing responsibility for JLAC, sunsets and sunrises. Staffing responsibility for JLAC follows the chairmanship while sunset and sunrise staffing responsibilities shift with legislative terms. Senate legislative staff is responsible for staffing sunset hearings during even-numbered legislatures (Forty-fourth Legislature) and legislative staff from the House is responsible during odd-numbered legislatures (Forty-fifth Legislature). Regardless of who has primary, it is always a good idea to keep ones staff counterpart(s) apprised of information and progress.

Staff responsibilities vary depending on whether the OAG or COR conducts the sunset audit. In most instances, staff is responsible for:

- coordinating with their Senate/House counterpart;
- initiating contact with the agency subject to sunset review;
- compiling background information;
- preparing information for COR members and other interested Legislators;
- scheduling the sunset and sunrise hearing(s);
- writing the final sunset and/or sunrise report; and
- facilitating the drafting of any legislative recommendations of the COR.

**Committees
Of
Reference**



(Forty-fourth Legislature)

Senate Committees of Reference

(Forty-fourth Legislature)

Appropriations

Ken Bennett, Chair
Darden Hamilton
Tom Smith
Joe Eddie Lopez
Ruth Solomon

Commerce, Agriculture & Natural Resources

Gus Arzberger, Chair
Scott Bundgaard
Randall Gnant
Sue Grace
Pete Rios

Education

Tom Smith, Chair
Ken Bennett
Eddie Joe Lopez
David Petersen
Victor Soltero

Family Services

Marc Spitzer, chair
David Petersen
Den Bennett
Victor Soltero
Mary Hartley

Finance

Scott Bundgaard, Chair
Ken Bennett
Darden Hamilton
Jack Brown
George Cunningham

Financial Institutions & Retirement

Edward Cirillo, Chair
Randall Gnant
Keith Bee
Linda Aguirre
Harry Mitchell

Government & Environmental Stewardship

Tom Freestone, Chair
Russell "Rusty" Bowers
Herb Guenther
David Petersen
Elaine Richardson

Health

Sue Grace, Chair
David Petersen
Keith Bee
Mary Hartley
George Cunningham

Judiciary

Marc Spitzer, Chair
Tom Smith
Tom Freestone
Ruth Solomon
Pete Rios

Transportation

Keith Bee, Chair
Tom Freestone
Ed Cirillo
James Henderson Jr.
Gus Arzberger

House of Representatives Committees of Reference (*Forty-fourth Legislature*)

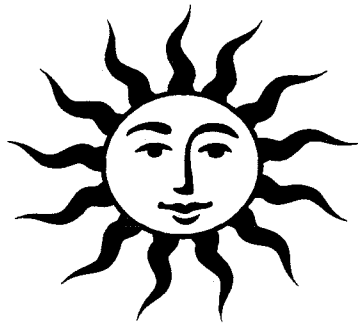
Academic Accountability Linda Binder, Chair Kathi Foster Susan Gerard Marion Pickens Dan Schottel	Agriculture Jake Flake, Chair Harry Clark Mike Gleason Sylvia Laughter Bill McGibbon	Appropriations Barbara Blewster, Chair Dean Cooley Sally Ann Gonzales Karen Johnson Christine Weason
Banking & Insurance Steve May, Chair Linda Binder Debra Brimhall Bill Brotherton Marion Pickens	Children & Family Integrated Delivery Systems Jeff Hatch-Miller, Chair Kathi Foster Laura Knaperek Rebecca Rios Mark Anderson	Commerce Kathleen Dunbar, Chair Carlos Avelar Steve Huffman Barbara Leff Debora Norris
Counties & Municipalities Steve Huffman, Chair Jim Carruthers Leah Landrum Mark Maiorana Roberta Voss	Economic Development Ted Carpenter, Chair Carlos Avelar Ken Cheuvront John Verkamp Roberta Voss	Education Linda Gray, Chair Mark Anderson Kathi Foster Mike Gardner Marion Pickens
Environment Carolyn Allen, Chair Jake Flake Joe Hart Andy Nichols Christine Weason	Federal Mandates & States' Rights Gail Griffin, Chair Barbara Blewster Debra Brimhall Bill Brotherton Carmine Cardamone	Government Operations Tom Horne, Chair Carolyn Allen Sally Ann Gonzales Mark Maiorana Jean Hough McGrath

House of Representatives Committees of Reference

(Forty-fourth Legislature)

Government Reform Wayne Gardner, Chair Debra Brimhall Carmine Cardamone Leah Landrum Jim Weiers	Health Sue Gerard, Chair Carolyn Allen Jeff Hatch-Miller Herchella Horton John Loredó	Human Services Karen Johnson Laura Knaperek Barbara Leff John Loredó Rebecca Rios
International Trade, Technology & Tourism Richard Kyle, Chair Jim Carruthers Ken Cheuvront Richard Miranda TBA	Judiciary Linda Binder, Chair John Loredó Christine Weason Barry Wong Roberta Voss	Natural Resources Gail Griffin, Chair Carmine Cardamone Harry Clark Jake Flake Bill McGibbon
Program Authorization Review Ted Carpenter, Chair Bob Burns Richard Miranda Andy Nichols Barry Wong	Public Institutions & Universities Ted Carpenter, Chair Sally Ann Gonzales Jean Hough McGrath Richard Miranda Dan Schottel	Rural & Native American Affairs Tom Gordon, Chair Carmine Cardamone Ted Carpenter Kathleen Dunbar Sylvia Laughter
Transportation Dean Cooley, Chair Harry Clark Kathleen Dunbar Jeff Hatch-Miller Wes Marsh Debora Norris	Veterans & Military Affairs Tom Gordon, Chair Mark Maiorana Wes Marsh Debora Norris Lou-Ann Preble	Ways & Means Wayne Gardner, Chair Bob Burns Ken Cheuvront Lori Daniels Ramón Valadez

Sunset Review Process



Conducting a Sunset Review

SUNSET REVIEW

(Title 41, Chapter 27, Arizona Revised Statutes)

DESCRIPTION

Established by Laws 1978, Chapter 210, the sunset review process is the systematic evaluation of an agency, under the supervision of JLAC, to determine if the merits of the program justify its continuation rather than termination, or its continuation at a level greater than or less than its current level. The entire sunset review process takes place over a 20-month period.

Sunset reviews are based on sunset audits *conducted by either OAG or COR*. JLAC initiates the sunset review process by reviewing the list of agencies scheduled for termination and assigning the agencies scheduled for termination to a COR. All agencies scheduled for sunset are assigned to a House and Senate COR. JLAC also makes the determination of whether OAG or COR will conduct the sunset audit (called a performance audit if conducted by the OAG). This determination is based upon a number of factors, including: the number of audit hours OAG estimates a performance audit of the agency will require; the number and seriousness of concerns and issues identified by OAG regarding the agency; and the size and budget of the agency.

Upon completion of the sunset audit, whether conducted by OAG or the COR, the COR is required to hold at least one public hearing to discuss the audit and receive testimony from agency officials and the public. The COR may hold subsequent hearings to obtain further information as deemed necessary. Upon completion of COR deliberations, including a review of the 12 statutory sunset factors, the COR must submit a final sunset review report by December 1, containing its recommendations.

The final sunset review report contains the COR recommendation to continue, revise, consolidate or terminate the agency. Legislative staff and Legislative Council typically draft any recommended legislation.

Historically, the COR chair has introduced the legislation necessary to continue, consolidate or revise an agency during the following legislative session; however, *the agency subject to sunset review has the responsibility of requesting the chair, or any other legislative member, to sponsor the necessary legislation*. If the COR recommends that the agency terminate legislation is not necessary. Legislative staff should communicate this responsibility to the agency.

CONDUCTING A SUNSET REVIEW

A sunset review is based upon an audit conducted by either the OAG (performance audit) or the legislative staff assigned to the COR. The essential difference between a performance audit and an audit conducted by a COR is the depth and scope of the audit.

A performance audit, conducted by OAG, is usually conducted over a period of several months and OAG staff actually goes on-site of the agency to review files and records and conduct interviews. COR audits are typically “self” audits as the agency is asked to respond to the sunset factors and Legislative staff conducts minimal background and legal research.

The steps for conducting a sunset review when the OAG conducts a performance audit are very similar to the steps for conducting a review when the COR conducts the audit. Following is a brief discussion of staff responsibilities under both of these scenarios.

1. WHAT TO DO IF OAG CONDUCTS THE AUDIT:

Step 1 - Assignment of reviews

- *The OAG submits a list of agencies scheduled for termination to JLAC* - This list includes all agencies statutorily scheduled for sunset termination and an estimation of the hours necessary to complete each agency's review if OAG were to conduct the review. The OAG submits this list at least 20 months prior to the agencies' scheduled date of termination.
- *JLAC establishes the sunset review schedule* - Based on a review of the sunset termination schedule and audit hours information submitted by OAG, JLAC approves the audit schedule. JLAC may delay an agency's review if it believes the OAG or COR will not be able to complete the audit according to schedule. If JLAC delays a review, it is responsible for introducing legislation to statutorily extend the agency's termination date so the agency will not expire pending review.
- *JLAC determines who shall perform the sunset audit* - Based on the sunset schedule and audit hours information submitted by OAG, JLAC determines whether OAG or COR will conduct an agency audit. The more complex agencies are generally assigned to OAG for an agency wide performance audit.
- *JLAC assigns agencies subject to review to a COR* - Statute requires all agencies scheduled for a sunset to be assigned to a COR regardless of

whether OAG or COR will conduct the sunset audit. Legislative staff is provided a list of COR assignments by JLAC staff.

Step 2 - Performance Audit

- *The OAG conducts performance audits of assigned agencies* - Legislative staff and all JLAC members receive a copy of the completed performance audit.

Step 3 - Pre-Sunset Hearing

- *Review performance audit* - Legislative staff should review the performance audit.
- *Contact other parties* - Upon review of the performance audit, legislative staff should contact the following parties to discuss agency performance, identify problems and other issues relating to the agency:

Joint Legislative Budget Committee (JLBC)
Governor's Office of Strategic Planning and Budgeting (OSPB)
OAG
Professional Associations
Interested Constituents

- *Contact the COR chairman and staff counterpart* - Legislative staff should inform the COR chair of the upcoming sunset review and discuss any potential issues/ concerns.
- *Schedule a public hearing, prepare agenda and materials for members* - The COR is required to hold a public hearing upon receipt of the performance audit, however, more than one meeting may be held if necessary.

When scheduling the public meeting, staff should consult with agency staff and the OAG to ensure their attendance.

At a minimum, the sunset hearing agenda should include the presentation of the performance audit by OAG and an opportunity for testimony from agency officials and the public.

The agenda may also include adoption of the COR recommendations if additional COR meetings will not be necessary. Materials distributed by legislative staff may include a summary of the performance audit and agency response, budget data and any draft recommendations.

- *Notify the agency* - Legislative staff may prepare a notification letter on behalf of the COR chairman stating the date and time of the sunset review hearing.

Meeting notices should also be sent to:

COR members
OAG
JLAC members
Attorney General

Legislative Council
JLBC Staff Director
Other interested parties

Step 4 - Sunset Hearing

- *Hold a public hearing* - Statute (ARS §41-2954) requires the COR to hold a public hearing for the following purposes:
 - (1) Determine the need of the agency to regulate or direct a particular activity.
 - (2) Determine if the agency is meeting its statutory responsibilities and if those responsibilities are necessary.
 - (3) Provide an opportunity for public testimony.
 - (4) Provide an opportunity for the agency to justify its continuation.
- *Sunset factors* - Statute (ARS §41-2954) requires the COR to consider, at a minimum, the following 12 sunset factors when determining the need for continuation or termination of an agency:
 - (1) The objective and purpose in establishing (continuing) the agency.
 - (2) The effectiveness with which the agency has met its objective and purpose, and the efficiency with which it has operated.
 - (3) The extent to which the agency has operated within the public interest.
 - (4) The extent to which rules adopted by the agency are consistent with the legislative mandate.
 - (5) The extent to which the agency has encouraged input from the public before adopting its rules and the extent to which it has informed the public as to its actions and their expected impact on the public.
 - (6) The extent to which the agency has been able to investigate and resolve complaints within its jurisdiction.
 - (7) The extent to which the attorney general or any other applicable agency of state government has the authority to prosecute actions under the enabling legislation.

- (8) The extent to which agencies have addressed deficiencies in their enabling statutes which prevent them from fulfilling their statutory mandate.
- (9) The extent to which changes are necessary in the laws of the agency to adequately comply with the factors listed in this subsection.
- (10) The extent to which the termination of the agency would significantly harm the public health, safety or welfare.
- (11) The extent to which the level of regulation exercised by the agency is appropriate and whether less or more stringent levels of regulation would be appropriate.
- (12) The extent to which the agency has used private contractors in the performance of its duties and how effective use of private contractors could be accomplished.

Step 5 - Follow-up

- *Prepare a final sunset report* - Legislative staff prepares a final report pursuant to statutory guidelines (ARS §41-2954) containing the following information:
 - (1) A recommendation that the agency be continued, revised, consolidated or terminated.
 - (2) An identification of the problem or the needs that the agency is intended to address.
 - (3) A statement, to the extent practical, in qualitative or quantitative terms, of the objectives of the agency.
 - (4) Identification of any conflicting or overlapping duties with other agencies.
 - (5) An analysis of the consequences of eliminating the agency.
- *Distribute final sunset review report* - By *December 1*, legislative staff should, at a minimum, distribute copies of the final report to the following:

JLAC members & staff	Director of the agency subject to review
COR members	Department of Library, Archives & Public
Governor's Office	Records
Secretary of the Senate	OAG
Chief Clerk	
- *Draft legislation* - Legislative staff and Legislative Council draft any recommended legislation. Legislation is not necessary if the COR recommends agency termination.

SUNSET REVIEW PROCESS TIMETABLE

(OAG Conducts a Performance Audit)

Deadline	Activity
<i>May/June</i>	OAG submits list of agencies subject to sunset review <i>(at least 20 months prior to termination of the agencies)</i>
<i>December 1</i>	JLAC assigns agencies to committees of reference for review <i>Staff is notified of JLAC assignments</i>
<i>August 1</i>	Draft performance audit completed <i>Agencies may respond to the draft performance audit within 40 days</i>
<i>October 1</i>	OAG submits performance audit report to JLAC <i>Staff schedules Sunset hearing(s)</i>
<i>December 1</i>	Final sunset review report completed
<i>January</i>	Introduction of legislation to implement COR recommendations
<i>July 1</i>	Termination of agency, unless legislatively continued

2. WHAT TO DO IF COR CONDUCTS THE PERFORMANCE AUDIT:

Step 1 - Assignment of reviews

- *The OAG submits a list of agencies scheduled for termination to JLAC* - This list includes all agencies statutorily scheduled for sunset termination and an estimation of the hours necessary to complete each agency's review if OAG were to conduct the review. The OAG submits this list at least 20 months prior to the agencies' scheduled date of termination.
- JLAC establishes the sunset review schedule - Following a review of the sunset termination schedule and audit hours information submitted by OAG, JLAC approves the audit schedule. JLAC may delay an agency's review if it believes the OAG or COR will not be able to complete the audit according to schedule. If JLAC delays a review, it is responsible for introducing legislation to statutorily extend the agency's termination date so the agency will not expire pending review.
- *JLAC determines who shall perform the sunset audit* - Based on the sunset schedule and audit hours information submitted by OAG, JLAC determines whether OAG or COR will conduct an agency audit. The more complex agencies are generally assigned to OAG for an agency wide performance audit.
- JLAC assigns agencies subject to review to a COR - Statute requires all agencies scheduled for a sunset to be assigned to COR regardless of whether OAG or COR will conduct the sunset audit. Legislative staff is provided a list of COR assignments by JLAC staff.

Step 2 - Initiate Contact

- *Contact the Chairman of the COR and Staff Counterpart* - Legislative staff should inform the COR chair of the upcoming sunset review and discuss any potential issues/ concerns.
- *Notify the agency* - Legislative staff prepares a notification letter on behalf of the COR chair informing the agency of its coming review and requesting the agency to submit a written report.

The agency must submit a report containing the agency's response to the twelve sunset factors listed in ARS §41-2954. The chair may request other relevant information such as copies of the agency's annual report or minutes

from board meetings. *The written response of the agency, and other relevant information, is the sunset audit when the COR conducts the sunset review.*

The agency should be asked to respond to the chair, by a date certain (*usually mid-August - September*), allowing enough time for legislative staff to review and distribute to COR members the materials received from the agency.

- *Contact other parties* - At a minimum, legislative staff should contact the following parties to discuss agency performance, identify problems and other issues relating to the subject agency:

Joint Legislative Budget Committee
Governor's Office of Strategic Planning and Budgeting
Professional Associations
Interested Constituents

Step 3 - Pre-Sunset Meeting/Review Materials

- *Review and evaluate sunset factors* - Legislative staff should, in conjunction with other information discovered through their research, review the agency's response. At a minimum, staff should ensure that the agency fully responded to the sunset factors.
- *Schedule a public hearing, prepare agenda and materials for members* - Upon receipt of the sunset audit, the COR is required to hold at least one public hearing, however, more than one meeting may be held if necessary. At a minimum, the agenda should include a presentation from agency officials and provide an opportunity for public input.

The agenda may also include adoption of the COR recommendations if follow-up COR meetings will not be necessary. Materials distributed by legislative staff may include a summary of the performance audit and agency response, budget data and draft recommendations.

Meeting notices should be sent to:

COR members
Legislative Council
Agency officials

JLAC members
JLBC Staff Director
Other interested parties

Step 4 - Sunset Meeting

- *Hold a public hearing* - Statute requires the COR to hold a public hearing for the following purposes:
 - (1) Determine the need of the agency to regulate or direct a particular activity.
 - (2) Determine if the agency is meeting its statutory responsibilities and if those responsibilities are necessary.
 - (3) Provide an opportunity for public testimony.
 - (4) Provide an opportunity for the agency to justify its continuation.

- *Sunset factors* - Statute (ARS §41-2954) requires the COR to consider, at a minimum, the following 12 sunset factors when determining the need for continuation or termination of an agency:
 - (1) The objective and purpose in establishing the agency.
 - (2) The effectiveness with which the agency has met its objective and purpose and the efficiency with which it has operated.
 - (3) The extent to which the agency has operated within the public interest.
 - (4) The extent to which rules adopted by the agency are consistent with the legislative mandate.
 - (5) The extent to which the agency has encouraged input from the public before adopting its rules and the extent to which it has informed the public as to its actions and their expected impact on the public.
 - (6) The extent to which the agency has been able to investigate and resolve complaints that are within its jurisdiction.
 - (7) The extent to which the attorney general or any other applicable agency of state government has the authority to prosecute actions under the enabling legislation.
 - (8) The extent to which agencies have addressed deficiencies in their enabling statutes which prevent them from fulfilling their statutory mandate.
 - (9) The extent to which changes are necessary in the laws of the agency to adequately comply with the factors listed in this subsection.
 - (10) The extent to which the termination of the agency would significantly harm the public health, safety or welfare.
 - (11) The extent to which the level of regulation exercised by the agency is appropriate and whether less or more stringent levels of regulation would be appropriate.

- (12) The extent to which the agency has used private contractors in the performance of its duties and how effective use of private contractors could be accomplished.

Step 5 - Follow-up

- *Prepare a final sunset report* - Legislative staff prepares a final report pursuant to statutory guidelines (ARS §41-2954) containing the following information:
 - (1) A recommendation that the agency be continued, revised, consolidated or terminated.
 - (2) An identification of the problem or the needs that the agency is intended to address.
 - (3) A statement, to the extent practical, in qualitative or quantitative terms, of the objectives of the agency.
 - (4) Identification of any conflicting or overlapping duties with other agencies.
 - (5) An analysis of the consequences of eliminating the agency.
- *Distribute final sunset review report* - By *December 1*, legislative staff should, at a minimum, distribute copies of the final report to the following:

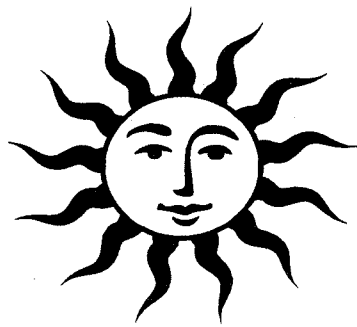
JLAC members & staff	Director of the agency subject to review
COR members	Department of Library, Archives & Public
Governor's Office	Records
Secretary of the Senate	OAG
Chief Clerk	
- *Draft legislation* - Legislative staff and Legislative Council draft any recommended legislation. Legislation is not necessary if the COR recommends agency termination.

SUNSET REVIEW PROCESS TIMETABLE

(COR Conducting Performance Audit)

Deadline	Activity
May/June	OAG submits list of agencies subject to sunset review (at least 20 months prior to termination)
December 1	JLAC assigns agencies to committees of reference for review <i>Staff is notified of JLAC assignments</i>
June/July	Agency contacted. Requested to submit responses to sunset factors
October	Staff schedules Sunset hearing(s)
December 1	Final sunset review report completed
January	Introduction of legislation to implement COR recommendations
July 1	Termination of agency, unless legislatively continued

Sunrise Review Process



Conducting a Sunrise Review

SUNRISE REVIEW PROCESS

(ARS § 32-3101 through 32-3106)

DESCRIPTION

The sunrise procedure was established by Laws 1985, Chapter 352, to provide a mechanism for health professions to request that the state regulate a currently unregulated profession or request an expansion of the scope of practice of a regulated profession.

To initiate the sunrise process an applicant group must submit a written report to JLAC, by September 1, responding to the statutorily prescribed sunrise factors (ARS §32-3105 or 32-3106). The report is then assigned, by JLAC, to a COR for review. The COR may hold meetings as necessary to consider the report and receive testimony from the public, the applicant group and, if applicable, the regulatory board of the health profession.

Although statute does not require the COR hold meetings to deliberate the sunrise application, the COR is required to study the sunrise report and deliver a report of its recommendations regarding the sunrise to JLAC, the Governor, President of the Senate, Speaker of the House of Representatives and the applicant group by December 1 of the same year the sunrise request is submitted to JLAC. Legislative staff and Legislative Council draft any recommended legislation.

Although not required, the COR chair may introduce any legislation recommended to regulate a currently unregulated profession or request that the scope of practice of a currently regulated profession be expanded, during the following legislative session; however, *the sunrise applicant has the responsibility of requesting the chair, or any other legislative member, to sponsor the legislation.* Legislative staff should communicate this responsibility to the applicant.

SUNRISE FACTORS

1. **GENERAL**

Statute stipulates that an unregulated health profession shall not be regulated unless the regulation is for the express purpose of protecting the public interest. All legislation proposed in order to regulate a health profession for the first time must be reviewed according to the following sunrise criteria:

- (1) If the practice of the health profession were to go unregulated, it could clearly harm or endanger the public health, safety or welfare and the potential for harm is easily recognizable and not remote or dependent on tenuous argument.
- (2) The public needs, and can be reasonably expected to benefit from, the regulation of the profession.
- (3) The public can not be effectively protected by other means in a more cost beneficial manner.

After evaluating the above criteria, if the legislature finds that it is necessary to regulate a health profession, statute stipulates that the regulation to be implemented must be the *least restrictive* as possible. Regulation may be achieved through regulation by an existing state agency and implementation of a registration or certification system, rather than the creation of a new licensing board.

2. **APPLICANTS FOR NEW REGULATION**

Pursuant to ARS §32-3105, the written sunrise report submitted to JLAC and the COR, applicants for regulation must respond to each of the following sunrise criteria:

- (1) Define the problem and why regulation is necessary, including the nature of potential harm to the public, the extent to which consumers need and will benefit from the regulation.
- (2) Describe efforts made to address the problem, including voluntary efforts and the use of applicable current law.
- (3) Alternatives considered.
- (4) Benefit to the public if regulation is granted.
- (5) The extent to which regulation may harm the public.
- (6) Proposed maintenance of standards.
- (7) A description of the group proposed for regulation, including a list of associations, organizations and another groups.

- (8) Expected costs to the state and the general public of implementing the proposed regulation.

3. *APPLICANTS FOR INCREASE IN SCOPE OF PRACTICE*

Pursuant to ARS §32-3106, the written sunrise report submitted to JLAC and the COR, applicants for increased scope of practice must respond to each of the following sunrise criteria:

- (1) Define the problem and why an increased scope of practice is necessary, including consumers need and benefits if an increase is granted.
- (2) The extent to which the public can be confident that qualified practitioners are competent.
- (3) The extent to which an increased scope of practice may harm the public.
- (4) The estimated cost to the state and the general public of implementing the proposed increase in scope of practice.

CONDUCTING A SUNRISE REVIEW

Step 1 - Application Submitted

- *An applicant group requesting regulation* - submits a written report defining: the problem, explaining the need for regulation and discussing the costs, benefits and negative impact of regulation. This report lists the affected associations, organizations and other practitioner groups, summarizes efforts taken to address the problem, describes alternatives to regulation and discusses the maintenance of professional standards. The report must be submitted to JLAC on or before *September 1*.

Step 2 - Assignment of review

- *JLAC receives the applicant group's report and assigns it to a COR.*

Step 3 - Pre-Sunrise Meeting

- *Review and evaluate sunrise factors* - Legislative staff should: determine if the sunrise request is for an increase in scope of practice or new regulation and review the appropriate sunrise factors; review the applicants' written report; and distribute copies to the report to COR members.
- *Contact the COR chair* - Legislative staff should inform the COR chair of the application for new regulation or expanded scope of practice (sunrise) and discuss any potential issues/concerns.
- *Schedule a public hearing* - A public hearing is not required by law and should be held at the discretion of the COR chair.
- *Prepare agenda and materials for a public hearing* - If the COR chair decides to hold a public hearing, the agenda, at a minimum, should include the presentation of the written report by the applicant and an opportunity for testimony other officials and the public. The agenda may also include adoption of final recommendations if additional COR meetings are not necessary. If a public hearing is held, it is recommended that staff contact other legislative staff such as JLBC and Legislative Council.
- *Recommendation* - The COR, upon review of the applicant group's sunrise request and receipt of testimony, may make recommendations regarding the request for regulation or the increased scope of practice.

Step 4 - Follow-up

- *Prepare final sunrise report* - While a meeting is not required on a sunrise, the COR is required to submit a report of its findings to JLAC, the Governor, President and Speaker by *December 1*.
- *Distribute sunrise review report* - Legislative staff distributes copies of the sunrise report and recommendations to the following individuals:

JLAC members & staff

COR members

Governor's Office

Applicant group

Department of Library, Archives and Public Records

Secretary of the Senate

Chief Clerk

- *Draft legislation* - Legislative staff and Legislative Council draft any recommended legislation.

SUNRISE PROCESS TIMETABLE

Deadline	Activity
<i>September 1</i>	Applicant group submits a written report to JLAC detailing the reasons for regulation or increase in scope of practice
<i>Not specified</i>	JLAC assigns agencies to committees of reference for review
<i>Not specified</i>	Sunrise hearing(s) scheduled <i>(Statute does not require that a hearing be held.)</i>
<i>December 1</i>	Final sunrise report submitted
<i>January</i>	Introduction of legislation to implement COR recommendations

EXHIBIT A

EXHIBIT A

Letter to agency to initiate sunset review conducted by legislative committee of reference

Dear _____,

The sunset review process prescribed in Title 41, Chapter 27, Arizona Revised Statutes, provides a system for the legislature to evaluate the need to continue the existence of state agencies. Under the sunset review process, an agency is reviewed by a legislative committee of reference. Upon completion of the sunset review, the committee of reference recommends to continue, revise, consolidate or terminate the agency.

The Joint Legislative Audit Committee (JLAC) has assigned the sunset review of (name of agency, board or commission) to the committee of reference comprised of members of the Senate _____ Committee and the House of Representatives _____ Committee.

ARS §41-2954 requires the committee of reference to consider certain factors in deciding whether to recommend continuance or termination of an agency. Please provide your response to those factors as provided below:

1. The objective and purpose in establishing the agency.
2. The effectiveness with which the agency has met its objective and purpose and the efficiency with which it has operated.
3. The extent to which the agency has operated within the public interest.
4. The extent to which rules adopted by the agency are consistent with the legislative mandate.
5. The extent to which the agency has encouraged input from the public before adopting its rules and the extent to which it has informed the public as to its actions and their expected impact on the public.
6. The extent to which the agency has been able to investigate and resolve complaints that are within its jurisdiction.
7. The extent to which the attorney general or any other applicable agency of state government has the authority to prosecute actions under the enabling legislation.
8. The extent to which agencies have addressed deficiencies in their enabling statutes which prevent them from fulfilling their statutory mandate.

9. The extent to which changes are necessary in the laws of the agency to adequately comply with the factors listed in this subsection.
10. The extent to which the termination of the agency would significantly harm the public health, safety or welfare.
11. The extent to which the level of regulation exercised by the agency is appropriate and whether less or more stringent levels of regulation would be appropriate.
12. The extent to which the agency has used private contractors in the performance of its duties and how effective use of private contractors could be accomplished.

In addition to responding to the factors in ARS §41-2954, please provide the committee of reference with copies of minutes from your meetings during fiscal year(s) ____ through ____ (if applicable), and an annual report, and respond to the attached questionnaire by (date) so that we may proceed with the sunset review and schedule the required public hearing.

Thank you for your cooperation. Please contact me if you have any questions.

Sincerely,

Chairman, Committee of Reference

EXHIBIT B

MEMO

TO: Interested Parties

FROM: House Research

SUBJECT: Arizona Historical Society Sunset Review

DATE: October 20, 1998

The Auditor General conducted a performance audit of the Arizona Historical Society (AHS) as part of the sunset review set forth in A.R.S. 41-2951 through 41-2957. A public hearing to review the performance audit and receive testimony from agency officials and the public has been scheduled for **November 12, 1998, at 10:00 A.M. in House Hearing Room #2**. In addition to the deliberations, the committee may adopt a final sunset review report, and may include any legislation necessary for implementation of its recommendations.

The sunset factors, a summary of the Auditor General's findings and recommendations and the agency's six-month follow-up response are attached. In order to prepare for the sunset hearing, please review the Auditor's Report and attachments and submit any information and/or comments regarding the agency's performance, problems and other issues relating to AHS to Tami Stowe, House Research no later than November 5, 1998.

The COR for the Historic Society is as follows:

Representatives	Jake Flake, Chair	Senators	Tom Freestone, Chair
	David Armstead		Sue Grace
	Brian Fagin		Ann Day
	Richard Kyle		James Henderson
	Gail Griffin		Victor Soltero

attachments

EXHIBIT C

To: COMMITTEE OF REFERENCE MEMBERS -
House Rural & Native American Affairs and
Senate Government

MEMORANDUM

From: Kathi Knox, Legislative Research Analyst *kk*

Subject: Arizona Commission of Indian Affairs

Date: November 2, 1998

The Auditor General conducted a performance audit of the Arizona Commission of Indian Affairs as part of the sunset review process required by state law. The Commission consists of 15 members, including seven Indian and two non-Indian members appointed by the Governor, and six ex officio members. The Auditor General Report, 98-9, explains the role of the Commission is to serve as the State's liaison with Indian tribes.

The report addresses the Commission's effectiveness and makes one finding and several recommendations:

FINDING: The Arizona Commission of Indian Affairs plays an insignificant role in state-tribal relations.

RECOMMENDATIONS:

- The Commission needs to better define its mission and improve its performance.
- The Commission should adopt rules for conduct of Commission meetings and address high rates of staff turnover.
- Statute should be modified to clarify the respective roles and reporting relationships of the Commission and Executive Director.
- The Governor and Commission should ensure that Commission vacancies are filled in a timely manner.
- If the Commission does not improve its performance, the Legislature should consider creating an Office of Indian Affairs within the Governor's Office with an Indian advisory board.

The summary pages from the report are attached.

A public hearing to review the performance audit has been scheduled for Friday, November 6, 1998 at 10:00 am in House Hearing Room 2.

Attachment
C:sunset98.kk

SUMMARY

The Office of the Auditor General has conducted a performance audit and Sunset review of the Arizona Commission of Indian Affairs pursuant to a May 27, 1997, resolution of the Joint Legislative Audit Committee. The audit was conducted under the authority vested in the Auditor General by Arizona Revised Statutes (A.R.S.) §§41-2951 through 41-2957.

The Commission of Indian Affairs (Commission), consists of 15 members including 7 Indian and 2 non-Indian members appointed by the Governor, and 6 ex officio members who serve by virtue of their office within state government. The Governor appoints an Executive Director who administers the Agency.

The Legislature established the Commission of Indian Affairs (Commission) in 1953 to "consider and study conditions among the Indians residing within the state." The Legislature changed this mission in 1986, by requiring the Commission to serve as the State's liaison with Indian tribes. Among other things, the Commission must gather and disseminate facts that tribal, state, and federal agencies need to work together effectively, assist the State in its responsibilities to tribes, and work for a greater understanding between Indians and non-Indians.

The Arizona Commission of Indian Affairs Plays Insignificant Role in State-Tribal Relations (See pages 9 through 17)

The Arizona Commission of Indian Affairs has been unable to effectively meet its statutory mission for many years and, as a result, has minimal impact on state-tribal relations. Arizona clearly needs an active Indian agency to coordinate frequent, structured, government-to-government communication between the State and the tribes. The State has a complex relationship with the 21 tribal governments residing in Arizona. Each tribal government is sovereign, with its own laws and administrative procedures. As a result, the State has very limited jurisdiction on reservation lands. However, even though it has limited jurisdiction on reservations, the State must provide tribal members with the services they are entitled to as Arizona citizens, such as health, education, and transportation services. Due to the unique status of tribal governments, confusion and misunderstanding can arise between the State and the tribes. Therefore, Arizona needs an active Indian agency to foster state-tribal communication.

The Commission of Indian Affairs has not taken the lead in creating a forum where the State and the tribes can address issues on a regular and proactive basis. The Commission should

improve its effectiveness by carrying out the activities central to its statutory mission. While the Commission has performed some activities, it has not established working relationships with state and tribal policymakers. The Commission has not regularly met with tribal officials or disseminated useful information to tribes. Further, the Commission has not held Indian Town Hall meetings for the last two years, despite receiving appropriations to do so. Additionally, the Commission has not regularly communicated and reported to state officials. For example, the Commission has not made recommendations on behalf of the tribes to the Governor or the Legislature, and has not issued an annual report describing its activities to state policymakers since 1991. The Commission's ability to meet its mission has been hampered by, among other things, internal confusion regarding the statutory responsibilities of and relationship between Commission members and agency staff, a lack of rules and regulations to guide Commission activities, unfilled Commission vacancies, and high staff turnover.

To meet its statutory mission, the Commission must develop goals and a plan to realize those goals, clarify internal confusion about the responsibilities of Commission members and staff, establish relations with state and tribal officials, hold annual Indian Town Halls, and regularly disseminate important information to key stakeholders.

If the Commission cannot improve its effectiveness, the Legislature may eventually want to consider creating a differently structured agency to manage state-tribal relations. Specifically, the Legislature could establish an Indian agency within the Governor's Office. Such an office would have a greater tie to the Governor and, therefore, may be in a better position to promote state-tribal communication. Additionally, placing the agency under the Governor could give it heightened status, and promote its visibility with both state and tribal leaders.

EXHIBIT D

ARIZONA HOUSE OF REPRESENTATIVES

MEMO

COMMERCE COMMITTEE

To: Joint Legislative Audit Committee
Representative Barry Wong, Chair
Senator Randall Gnant, Co-chair

From: Diana O'Dell, Research Analyst

Subject: Sunset Review of the Arizona Board of Appraisal

Attached is the final report of the Sunset Review of the Board of Appraisal, which was conducted by the Senate Commerce and Economic Development and the House of Representatives Commerce Committees of Reference.

This report has been distributed to the following individuals and agencies:

Governor of the State of Arizona
The Honorable Jane Dee Hull

President of the Senate
Senator Brenda Burns

Speaker of the House
Representative Jeff Groscost

Senate Members
Senator Pat Conner, Co-chair
Senator Chris Cummiskey
Senator Sue Grace
Senator David Petersen
Senator Pete Rios

House Members
Representative Sue Lynch, Co-chair
Representative Linda G. Aguirre
Representative Brian Fagin
Representative Gail Griffin
Representative Roberta L. Voss

Arizona Board of Appraisal
Office of the Auditor General
Office of the Attorney General
Department of Library and Archives
Office of Strategic Planning and Budgeting

House Majority Staff
House Research Staff
House Minority Staff

Senate Majority Staff
Senate Research Staff
Senate Minority Staff

COMMITTEE OF REFERENCE
*Senate Commerce and Economic Development Committee &
House of Representatives Commerce Committee*


ARIZONA BOARD OF APPRAISAL

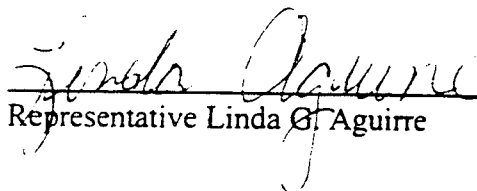
Date: October 27, 1998
To: JOINT LEGISLATIVE AUDIT COMMITTEE
Representative Barry Wong, Chair
Senator Randall Gnant, Co-Chair


Pursuant to Title 41, Chapter 27, Arizona Revised Statutes, the Committee of Reference, after conducting a performance review and holding a public hearing, recommends the following:

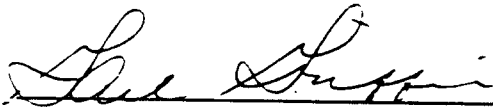
1. The Auditor General shall conduct a performance audit of the Board of Appraisal (Board) pursuant to 41-1279.03 on or before December 31, 2004, and every 10 years thereafter.
2. The Board shall provide an annual report by December 31, 1999, and again by December 31, 2000, to the Legislature, the Governor and the Joint Legislative Audit Committee regarding the progress of implementing the recommendations outlined in the Auditor General's 1998 Performance Audit (Report No. 98-6).

COMMITTEE OF REFERENCE


Representative Sue Lynch, Chair

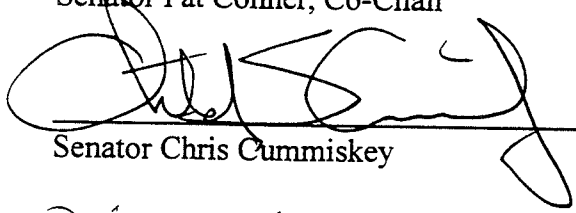

Representative Linda G. Aguirre



Representative Brian Fagin


Representative Gail Griffin



Representative Roberta L. Voss


Senator Pat Conner, Co-Chair


Senator Chris Cummiskey


Senator Sue Grace


Senator David Petersen


Senator Pete Rios

ARIZONA HOUSE OF REPRESENTATIVES

COMMITTEE OF REFERENCE

*Senate Commerce and Economic Development Committee &
House of Representatives Commerce Committee*

ARIZONA BOARD OF APPRAISAL

Final Report

I. Background

The Joint Legislative Audit Committee (JLAC) assigned the review of a performance audit of the Arizona Board of Appraisal to the Senate Commerce and Economic Development and the House of Representatives Commerce Committees of Reference. Pursuant to §41-1279.03, Arizona Revised Statutes, the Office of the Auditor General completed the performance audit.
[Attachment A]

II. History

The Arizona Board of Appraisal was established by Laws 1990, Chapter 313, as a result of federal legislation mandating that all federal real estate appraisal and related transactions be completed by regulated individuals.

The Board's duties include: licensing and certifying the approximately 1,500 real estate appraisers, and ensuring they maintain federal standards; conducting investigations and hearings; and, taking disciplinary action when warranted. In addition, the Board oversees the registration of about 400 property tax agents acting on behalf of owners involved in disputes regarding property tax.

This 90/10 agency had revenues totaling \$494,660 for FY 1997. expenditures of \$277,139. and a fund balance of nearly \$1.1 Million.

The Board's mission is: *"To promote quality real estate appraisal in Arizona through a licensing, certification and regulatory system, as well as a property tax registration system that protects the health, safety, and welfare of the public."*

II. Committee of Reference Performance Audit Procedure

The Committee of Reference held one public hearing on Tuesday, October 27, 1998, to review the performance audit prepared by the Office of the Auditor General and to receive public testimony. At the public hearing, the Committee heard testimony from the following:

- Natalie Coombs, Office of the Auditor General
- Bill Thomson, Director, Performance Audit, Office of the Auditor General
- Shirley Berry, Executive Director, Arizona Board of Appraisal
- Norman Miller, Legislative Counsel, Arizona Appraisers Coalition
- Roy Morris, Arizona Appraisal Board Liaison, Arizona Appraisers Coalition
- J. Woodfin Thomas, Chairman, Arizona Appraisers Coalition
- Betty Stoneking, Independent Oversight Committee
- John McCoy, Arizona Appraisal Board Liaison
- Gerald Zaddack, Government Relations Chair, Appraisal Institute--Phoenix, Arizona

The presentation summarized the Auditor General's findings and recommendations as follows:

- Complaints are not resolved in a timely manner.

Recommendation: The Board needs to improve its complaint investigation process by ensuring the progress of volunteer investigators; or, hiring/training appraisers to perform investigations.

- The Board should further separate its investigation and adjudication functions.

Recommendation: The Board should separate the two functions by eliminating the Disciplinary Committee; assigning cases to one Board member for review; and, recusing that member from further involvement.

- The Board needs to improve public access to information.

Recommendations: The Board should establish and implement a written policy detailing the information to be released by telephone; and, improve its file management to ensure complaint files contain appropriate and adequate documentation.

- The Board should consider modifying its fee schedule.

Recommendation: The Board implemented a temporary fee reduction effective December 1998.

In addition to the above findings and recommendations, the report addressed some specific questions and concerns that were voiced by Legislators in response to their constituencies and the regulated community in general.

In response to the Auditor General's report, Shirley Berry, Executive Director of the Board of Appraisal said the Board had taken steps to implement the Auditor's recommendations:

- The Board hired a new staff investigator and has decreased the response time for investigators. In addition, the Board will hire investigators.
- The Board's new administrative rules authorize informal hearings. In addition, the Disciplinary Committee was eliminated and the Board will utilize the Office of Administrative Hearings.
- The Board implemented a public records policy to ensure the public receives accurate information.
- The license fees will be reduced.

Minutes of the Committee of Reference hearing may be obtained by contacting the Office of the Chief Clerk. [Attachment B]

III. Committee Recommendations:

The Committee of Reference recommends the following:

1. The Auditor General shall conduct a performance audit of the Board of Appraisal (Board) pursuant to 41-1279.03 on or before December 31, 2004, and every 10 years thereafter.
2. The Board shall provide an annual report by December 31, 1999, and again by December 31, 2000, to the Governor, the Legislature and the Joint Legislative Audit Committee regarding the progress of implementing the recommendations outlined in the Auditor General's 1998 Performance Audit (Report 98-6).

V. Attachments:

- A. Meeting Notice
- B. Minutes of Committee of Reference Hearing

Prepared by: Diana O'Dell,
Commerce Committee Staff
Arizona House of Representatives
Date: November 12, 1998

ARIZONA STATE LEGISLATURE

Attachment A

Meeting Notice

Open to the Public

**Joint Senate Commerce & Economic Development and
House Commerce**

**Committee of Reference
on the
Auditor General's Performance Audit of the Arizona Board of Appraisal**

DATE: Tuesday, October 27, 1998

TIME: 10:00 am

PLACE: House Hearing Room 2

SUBJECT: Auditor General's Performance Audit on the Arizona Board of Appraisal

A G E N D A

1. Opening Remarks
2. Presentation by the Office of the Auditor General
3. Response to Auditor General's Report by the Arizona Board of Appraisal
4. Discussion
5. Recommendations
6. Public Testimony
7. Adjourn

Senator Pat Conner
Cochair

Representative Sue Lynch
Cochair

Senate Members
Senator Chris Cumiskey
Senator Sue Grace
Senator David Petersen
Senator Pete Rios

House Members
Representative Linda Aguirre
Representative Brian Fagin
Representative Gail Griffin
Representative Roberta L. Voss

/tm
10/13/98

People with disabilities may request reasonable accommodations such as interpreters, alternative formats, or assistance with physical accessibility. If you require accommodations, please contact the Chief Clerk's Office at (602) 542-3032, (TDD) 542-6241.

ARIZONA STATE LEGISLATURE
Forty-third Legislature - Second Regular Session

**JOINT SENATE COMMERCE & ECONOMIC DEVELOPMENT AND
HOUSE COMMERCE
COMMITTEE OF REFERENCE
ON THE AUDITOR GENERAL'S PERFORMANCE AUDIT OF THE
ARIZONA BOARD OF APPRAISAL**

Minutes of Meeting
Tuesday, October 27, 1998
House Hearing Room 2 - 10 00 a m

(Tape 1, Side A)

The meeting was called to order at 10 10 a m. by Cochairman Lynch and attendance was noted by the secretary.

Members Present

Senator Grace
Senator Rios
Senator Conner, Cochair

Representative Aguirre
Representative Voss
Representative Lynch, Cochair

Members Absent

Senator Cummiskey
Senator Petersen

Representative Fagin
Representative Griffin

Speakers Present

Diane O'Dell, House Research Analyst
Natalie Coombs, representing Auditor General's Office
Shirley Berry, Executive Director, Arizona Board of Appraisal
Norman Miller, Legislative Counsel, Arizona Appraisers Coalition
Bill Thomson, Director, Performance Audit, Auditor General's Office
Roy Morris, Arizona Appraisal Board Liaison, Arizona Appraisers Coalition, Scottsdale
J Woodfin Thomas, Chairman, Arizona Appraisers Coalition
Betty Stoneking, representing Independent Oversight Committee (IOC), Sun City West
John McCoy, Arizona Appraisal Board Liaison, Past Chairman, Arizona Appraisers Coalition,
Scottsdale
Gerald Zaddack, Government Relations Chair, Appraisal Institute - Phoenix Chapter

Guest List (Attachment 1)

Opening Remarks

Diane O'Dell, House Research Analyst, explained that the performance audit of the Arizona Board of Appraisal is the result of concerns voiced by Legislators, constituents, and some industry personnel. The Board was established in 1990 due to federal legislation requiring regulation of individuals who perform real estate appraisals and related federal transactions. The Board is unique because there is no statutory sunset date. She added that since this is not a regular sunset hearing, the Committee is under no obligation to make formal recommendations as far as continuation of the agency, however, the Committee may choose to make recommendations to the full Legislature.

Presentation by the Office of the Auditor General

Natalie Coombs, representing Auditor General's Office, gave a slide presentation reflecting the findings of a performance audit of the Arizona Board of Appraisal (Attachment 2). For details, see Report No. 98-6 dated March 1998, Pages i through 28 (Attachment 3, original filed in the Office of the Chief Clerk). In response to questions posed by Ms. Voss, she related the following information:

- The recommendations of the performance audit are in accordance with federal law.
- It was difficult to ascertain if disciplinary procedures are consistent because the reports are so different.
- There is no set of guidelines delineating certain types of discipline for certain cases.
- Some agency boards have disciplinary guidelines and standards that could be used but it is becoming less and less common.

Response to Auditor General's Report by the Arizona Board of Appraisal

Shirley Berry, Executive Director, Arizona Board of Appraisal, responded to the performance audit findings (Attachment 4). For details, see Report No. 98-6 dated March 1998, Yellow Pages (Attachment 3, original filed in the Office of the Chief Clerk). In response to questions posed by the Members, she related the following information:

- In conjunction with elimination of the Disciplinary Committee, the Board included an informal hearing process that was not previously in rule. The entire Board will receive information but one member will be the lead person on each particular case. Disciplinary decisions will be made by the full Board.
- The rules package was originally turned in during June 1998. The Board was asked to discuss the entire package, including disciplinary proceedings, with the appraisal industry. Public hearings were held, as well as individual hearings with those who voiced concerns at the Office of Administrative Hearings (OAH) meeting. Following that, the rules package was passed.

- Cutting costs by using OAH is not a major objective of the Board. The fact that it costs more to utilize OAH was mentioned in the response because the Auditor General's Office indicated that it may reduce costs. The Board's objective is protecting the public. The \$1.1 million budget surplus will be used to hire investigators so that cases can be resolved in a more timely fashion, and the Board plans to continue to use OAH.
- The fee reductions will not hamper the Board's ability to contract services. The reductions are applicable for a two-year period, after which the fee structure will be revisited to determine if a relatively permanent fee standard can be set.
- When the Board was initially created, there were three people in a small office with a \$100,000 debt to the state, which was paid off. At that time, volunteer investigators worked very well because the number of complaints were minimal. In the last few years, however, there has been an accumulation of complaints as people have become aware of the Board's existence.

(Tape 1, Side B)

- The plan is to have a pool of investigators from all areas of the state. The Request For Procurement (RFP) should go out in about two-and-a-half weeks and resumes will be sent to the Procurement Office. Investigators will be used on an as-needed basis and cases will be appropriately assigned.
- Questions raised over the phone are now being answered properly. Calls regarding complaints are generally referred to the Investigator, who can access information on the computer and provide an answer. When the auditors were conducting the audit, the Board was in the process of installing a tracking system. There were a few temporary people feeding material into the computer in order to better track items, but the installation process is now complete.
- The Executive Director's job is that of an administrator. In the United States and places like the Virgin Islands, Guam, etc., there are only six appraisers who are Executive Directors. One was recently removed and replaced with a non-appraiser because it becomes a conflict in many instances.
- Basic qualifications for the Executive Director and staff were devised by the Board, which was organized quite a while before an Executive Director was hired.
- Appraisers operate under Uniform Standards of Professional Appraisal Practice (USPAP) set by the Appraiser Foundation in Washington, D.C. When the Board changed the rules last time to include the 1995 edition of the USPAP, the Board purchased and sent the standards, as well as new rules and statutes, to all appraisers. The Board recently changed to the 1998 edition of USPAP, and that is now being changed to the 1999 edition, which will be effective in April 1999. The Board has a web site address, so those items will soon be available on the Internet. Newsletters have been sent out in the past (at least one per year) regarding changes.
- USPAP standards apply to the entire appraisal industry. Currently, a copy can be obtained from the web site for the Appraisal Foundation until the Board's web site is

completely up, or the Board can provide the address of the Appraisal Foundation if someone wishes to write and request a copy

- USPAP standards do not include consequences for certain violations but outline what must be done in order to comply with the standards.
- The Board sets consequences according to individual cases because every one is different. Violations occur in different combinations, which makes it difficult to preset consequences.

Ms. Voss encouraged establishment of common consequences for certain egregious behaviors

Public Testimony/Discussion

Norman Miller, Legislative Counsel, Arizona Appraisers Coalition, stated that he aided in drafting the legislation creating the Board. He indicated that since the Board was implemented in 1991, the Coalition views issues, in part, as "growing pains" of the young Board. In the beginning, volunteer appraisers were laudable but the Board is now moving toward professional investigators on a paid basis. He said he believes the Board has taken great strides to respond to the results of the audit and encouraged the Committee to continue the process of auditing.

Bill Thomson, Director, Performance Audit, Auditor General's Office, related that the normal review cycle under sunset is ten years, unless the Legislature is concerned and reduces the time to three or five years. He deferred to the Committee to determine when a review is appropriate but indicated that he perceives no difficulty in relation to the workload of the Auditor General's Office. If the Committee wishes to recommend a performance audit, the requirement can be put in law or a recommendation can be communicated to the Joint Legislative Audit Committee (JLAC).

Senator Grace, as a Member of JLAC, suggested that since the Board is unique, it may be appropriate to make a recommendation for a requirement in statute. Since there are problems, perhaps the Board could make a follow-up report to the Legislature in a few years. She said she is not sure another audit is needed within a short period of time since recent problems have been addressed to a large extent.

Cochairman Conner submitted that since the Board cannot be sunsetted due to federal regulations, there should be some type of recommendation by the Committee.

Cochairman Lynch acknowledged that many concerns have been addressed but speculated that it may be wise to have the Board readdress points in the audit, maybe in a year or two.

Senator Grace said maybe an annual report is appropriate until the Board is more settled.

(Tape 2, Side A)

Mrs. Berry indicated that a yearly audit is too close, especially since an audit is performed every three years by the Appraisal Subcommittee in Washington, D.C. She acknowledged that the federal audit

is somewhat different. It is conducted in a shorter period of time and focuses on specific items, but the Board does have to prepare for it. She related that requiring the Board to provide an annual update on the Auditor General's recommendations would not be a burden.

Ms. Berry advised Cochairman Conner that the Board recently began holding monthly sessions with the regulated community to obtain views on items for possible incorporation in Board activities.

Roy Morris, Arizona Appraisal Board Liaison, Arizona Appraisers Coalition, Scottsdale, advised that the Coalition is made up of six nationally recognized appraisal organizations, as well as non-aligned appraisers. The group has been proactively working with Ms. Berry and her staff, reviewed the report from the Auditor General, and is in general concurrence with the findings. He agreed that the complaint process was taking too long, but submitted that adoption of the new rules package will assist not only the regulated community, but the public as well. He recommended periodic audits of the Board.

J. Woodfin Thomas, Chairman, Arizona Appraisers Coalition, conceded that the Board has had some "growing pains," as well as the industry as a whole, and recommended an audit cycle beginning with five years, and then ten years. He submitted that a yearly response should not be a great burden because many of the recommendations have already been adequately addressed, so the number of issues should be shrinking. He advised Cochairman Conner that seven appraiser organizations exist, and six belong to the Coalition.

Betty Stoneking, representing Independent Oversight Committee (IOC), Sun City West, stated that she was one of the first attendees at the Arizona Board of Appraisal meetings, and she continued attending the meetings as a public eye, or watchdog. Since she taught classes in Arizona appraisal law, she thought she should know what is going on because the public and the industry was not adequately informed. Initially, she was very pleased with the Board and became friends with Ms. Berry and the staff. However, when the Board began investigating complaints in 1993, power began corrupting the members on the Disciplinary Committee. She implied that the Board went after some appraisers, and seven people were ruthlessly destroyed for no reason. She began telling people what was going on, but no one believed her. Eventually, though, people began to find friends "under the gun" or treated preferentially if a friend was on the Board. She contended that the Board is in great need of reform.

She disapproved of the rules package adopted on October 1, 1998 and submitted results of a survey sent out to 245 people she represents who believe the rules are obnoxious and cannot be approved (Attachment 5, originals filed in the Office of the Chief Clerk). She indicated that participants are identified by numbers in order to remain anonymous. She advised that she can speak for the IOC because she is retired so the Board cannot influence her in any way.

Ms. Stoneking related that the Board updated USPAP standards from 1995 to 1998, but they were obsolete within two weeks. The 1999 issue has been completely revised, and now the Board has 14 hours of education appraisers must take on USPAP standards that are completely obsolete. She contended that the Board purposely keeps files open on an appraiser so that if anything else comes

up, it can be added to the file. This has been the pattern and the reason for the backlog of 118 complaints. She submitted that the Board put in rule that OAH does not need to be used if cause is found, so Board hearings can still be held if the Board wants to go after someone. She indicated that she provided the Members with a packet of IOC newsletters documenting items in the Auditor General's report that the Board accused the IOC of doing. The IOC did not do any of the items, and she has the documentation to prove it. She requested a meeting of a Legislative group to review 31 unresolved issues for Legislative enforcement.

Ms. Stoneking advised Cochairman Lynch that the IOC consists of almost 300 members. Since March 1996, meetings of the Board have been audio taped and sent to IOC members so everyone in the state knows what is going on with the Board. People can attend IOC meetings by invitation only. It is a confidential group because people will be targeted if members are identified.

John McCoy, Arizona Appraisal Board Liaison, Past Chairman, Arizona Appraisers Coalition, Scottsdale, endorsed the idea of a periodic audit. Referring to the package addressed by Ms. Stoneking, he indicated that he would support a review for validity by the Attorney General's Office. He added that the Coalition has worked closely with the Board since its inception. It has been a growing process, but the Board is making headway. He related that the latest rules package incorporates many concerns of the industry and he is looking forward to continue working with the Board.

Gerald Zaddack, Government Relations Chair, Appraisal Institute - Phoenix Chapter, indicated that members are involved in residential and commercial appraising activities in Arizona, and the Phoenix Chapter has been very active in the rules development procedure. He thanked Ms. Berry and the Board members for their efforts. He noted that during recent Governor's Regulatory Review Council (GRRC) hearings, Ms. Berry pledged to work with the regulated community to develop written policies regarding, among other things, guidelines for disciplinary actions and procedures. In light of significant changes to the rules package, especially disbanding of the Disciplinary Committee, utilization of OAH, and working with the community to develop written policies, he said he supports a regular schedule for audits and periodic review by the Legislature. He added that he would appreciate any encouragement and direction the Committee can provide to the Board to enhance communication with the public and regulated community.

Recommendations

Senator Grace moved that the Committee recommend legislation to place the Arizona Board of Appraisal on a performance review cycle every ten years and require the Board to report on a yearly basis to the Legislature and JLAC on points raised in the current update.

Discussion followed.

Senator Grace withdrew her motion.

Senator Grace moved that the Committee recommend that an audit be performed on the Arizona Board of Appraisal in 2004 and that the Board be placed on a ten-year audit cycle commencing on that date. Additionally, the Board shall provide the Legislature with a report in 1999 and 2000 on continuing improvements in reference to the performance audit conducted this year.

(Tape 2, Side A)

The motion carried.

Without objection, the meeting adjourned at 11:40 a.m.


Linda Taylor, Committee Secretary

(Original minutes, attachments, and tape are on file in the Office of the Chief Clerk. A copy of minutes and attachments are on file with the Senate Secretary.)


GUESTS ATTENDING MEETING


TIME 1000 am


NAME AND TITLE (Please print)

BILL NO.

ATTACHMENT /

 <h2 style="text-align: center;">Performance Audit</h2> <h3 style="text-align: center;">Arizona Board of Appraisal</h3> <p style="text-align: center;">October 1998</p>

 <h2 style="text-align: center;">Introduction</h2> <ul style="list-style-type: none"> ■ Background ■ Finding I Complaints are not resolved in a timely manner ■ Finding II The Board should further separate its investigation and adjudication functions
--

 <h2 style="text-align: center;">Introduction</h2> <ul style="list-style-type: none"> ■ Finding III The Board needs to improve public access to information ■ Finding IV The Board should consider modifying its fee schedule ■ Legislative concerns



Background

Board History and Responsibilities

- Established in 1990 in response to federal changes in banking regulations
- Regulates real estate appraisers whose appraisals are used in connection with federally related transactions



Background (Cont)

- Board regulates approximately 1,500 appraisers
- Board registers approximately 400 property tax agents



Background (Cont)

- | Board | Staff |
|------------------------|----------------------|
| 3-year terms | |
| ■ 4 appraisers | ■ Executive director |
| ■ 4 public members | ■ 3 staff |
| ■ 1 property tax agent | |





Board Finances

- Revenues from licensing and registration
- 90/10 agency
- Fiscal year 1997
 - ◆ \$494,000 revenues
 - ◆ \$277,139 expenditures
 - ◆ \$197,861 fund balance



Finding I

Complaints not
resolved in a timely manner



Finding I

- A complaint backlog exists
 - ◆ Approximately one year's worth of complaints remain unresolved
 - ◆ 90 complaints open a median of 305 days
 - ◆ 30 of those open more than 1 year



Finding I

- Average time to resolve 75 cases was 224 days
 - ◆ Some complaints were resolved more quickly
 - ◆ Administrative complaints averaged 79 days
 - ◆ Complaints that did not require outside investigation averaged 169 days



Finding I

- Delays occur when complaints require further investigation by volunteer appraisers
 - ◆ 21 cases involving volunteer investigators averaged 489 days to close



Finding I

- The Board and staff are slow to refer cases to volunteer investigators
 - ◆ Committee and staff took an average 107 days to determine 21 of 75 files needed additional investigation in fiscal year 1997



Finding I

- Volunteers' investigations not timely
 - ◆ Board requests volunteers complete investigations within 30 days
 - ◆ Volunteers took an average of 122 days to complete investigation reports for 21 cases



Recommendation

- The Board needs to improve its complaint investigation process by
 - ◆ Ensuring the progress of volunteer investigators is adequately monitored, or
 - ◆ Hiring and training appraisers to perform investigations



Finding II

Board Should Further
Separate Its Investigation and
Adjudication Functions



Finding II

- Board needs to separate its investigation and adjudication processes
 - ◆ Majority of Board members participate in both
 - ◆ Separation promotes objective decision-making



Finding II

- Board should consider using the Office of Administrative Hearings to conduct formal hearings, which could
 - ◆ Minimize perceptions of unfairness
 - ◆ Strengthen formal hearing procedures
 - ◆ Reduce cost on average





Recommendations

- Board needs to separate investigation and adjudication functions by
 - ◆ Eliminating the Disciplinary Committee
 - ◆ Assigning cases to one Board member for review
 - ◆ Recusing that Board member from further involvement
- Board needs to begin using OAH



Finding III

The Board Needs to Improve
Public Access to Information



Finding III

- Public not provided complete information by telephone
 - ◆ Nature of complaints not provided
 - ◆ Number and status incorrect
- Complaint files disorganized or incomplete
 - ◆ Some files empty
 - ◆ Others do not contain sufficient documentation of Board actions



Recommendations

- Board should establish and implement a written policy detailing the information to be released by telephone
- Board should improve its file management to ensure complaint files contain appropriate and adequate documentation



Finding IV

Board Should Consider Modifying Its Fee Schedule



Finding IV

- Board's fund balance is nearly \$1.1 million
 - ◆ Annual budget is \$289,000
 - ◆ Could operate nearly 4 years with no additional income



Recommendation

- Board should consider a temporary fee reduction
 - ◆ Temporary fee reduction approved in December 1997
 - ◆ Effective December 1998



Legislative Concerns

- Additional legislative concerns were reviewed relating to
 - ◆ Whether the Board complied with Open Meeting Law in processing complaints
 - ◆ Whether Board members were serving in accordance with statute
 - ◆ Whether the Board had sufficient staff to process complaints in a timely manner



Performance Audit

Arizona
Board of Appraisal
October 1998

EXHIBIT E

**COMMITTEE OF REFERENCE
REPORT ON THE SUNRISE HEARING FOR THE
REGULATION OF CERTIFIED SURGICAL ASSISTANTS**


DATE: November 15, 1995

TO: THE JOINT LEGISLATIVE AUDIT COMMITTEE
Senator Patti Noland, Chair
Representative Sue Grace, Chair


Pursuant to Title 32, Chapter 31, Arizona Revised Statutes, the Committee of Reference, after performing a sunrise review and conducting a public hearing, recommend the following:

A board regulating certified surgical assistants not be created.


COMMITTEE OF REFERENCE



Senator Ann Day, Co-Chair

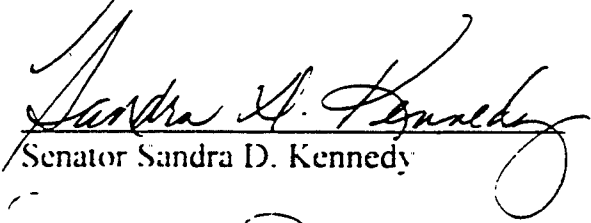


Representative Susan Gerard, Co-Chair



Senator Jan Brewer

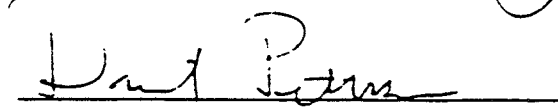
Representative Don Aldridge



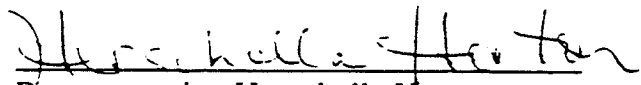
Senator Sandra D. Kennedy



Representative Lou-Ann Preble



Senator Petersen



Representative Herschella Horton

Senator James Henderson, Jr.

Representative Kathi Foster

**COMMITTEE OF REFERENCE
REPORT ON THE SUNRISE HEARING FOR THE
REGULATION OF CERTIFIED SURGICAL ASSISTANTS**

I. BACKGROUND

Pursuant to section 31-3104, Arizona Revised Statutes, the Joint Legislative Audit Committee (JLAC) assigned the sunrise review of the regulation of holistic dentists to the Senate and House Health Committee of Reference. Attached is a copy of the application for regulation submitted to the Committee of Reference by the West Coast Surgical Specialists, Inc. (Attachment A.)

II. COMMITTEE SUNRISE REVIEW PROCEDURE

On November 15, 1995, the Committee of Reference held a public hearing to receive testimony on the proposed regulation of surgical assistants. Those testifying included practicing surgical assistants, and the Arizona Medical Association.

The proposal was to create a separate board to certify and regulate surgical assistants. Currently, the scope of practice for surgical assistants is regulated by individual hospitals which choose to utilize this level of medical assistant. The West Coast Surgical Specialists, Inc. submitted a written report to the committee which addressed the following factors:

- A. A definition of the problem and why a separate regulatory board for surgical assistants was necessary, including the extent to which consumer needs will benefit from a separate board.
- B. An explanation of the nature of potential harm to the public if the profession was not regulated separately.
- C. An explanation of a need to establish a maintenance of ethical and educational standards within the profession.
- D. Suggested legislative language.

III. COMMITTEE RECOMMENDATIONS

1. The Committee recommended that a separate regulatory board for surgical assistants not be created.
2. The Committee recommended that the surgical assistants work with the various groups, including the Arizona Hospital Association, Board of Medical Examiners, Board of Nursing, and Arizona Medical Association, to formulate a proposal for regulation possibly under an existing board.

IV. ATTACHMENTS

- A. Application for Regulation
- B. Minutes of the Committee of Reference Meeting